

MAY 27, 2011

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**IN THE SUPREME COURT OF THE STATE OF IDAHO
Docket No. 33843**

STATE OF IDAHO,)	Boise, April 2011 Term
)	
Plaintiff-Respondent,)	2011 Opinion No. 68
)	
v.)	Filed: May 27, 2011
)	
JONATHAN W. ELLINGTON,)	Stephen W. Kenyon, Clerk
)	
Defendant-Appellant.)	
)	

Appeal from the District Court of the First Judicial District of the State of Idaho, Kootenai County. Hon. John P. Luster, District Judge.

The decision of the district court denying the motion for new trial is reversed. The conviction and sentence are vacated and the case is remanded to the district court for a new trial.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.
Erik R. Lehtinen argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.
Mark W. Olson argued.

In a unanimous decision released today, the Idaho Supreme Court vacated the second degree murder conviction, two counts of aggravated battery and sentence of Jonathan Ellington and reversed the denial of his motion for a new trial.

Ellington appealed from his convictions for second-degree murder and two counts of aggravated battery. The facts of the case revolve around an incident that occurred in Athol, Idaho, on January 1, 2006, involving three cars: one driven by Ellington, one driven by Jovon Larsen, 22, with her sister Joleen, 18, as a passenger, and one driven by Jovon and Joleen’s mother, Vonette Larsen, with her husband Joel Larsen as a passenger. Ellington was charged with two aggravated assault counts as a result of a collision between his car and the car driven by Jovon. He was charged with second-degree murder for the death of Mrs. Larsen, who was struck by Ellington’s car during the incident. The defense argued at trial that Ellington did not act intentionally. Ellington was convicted on all counts on August 7, 2006 after a trial by jury in Coeur d’Alene. He argued on appeal that prosecutorial misconduct, evidentiary errors, a biased jury, and the cumulative error doctrine entitled him to a new trial. Ellington also argued that the district court abused its

discretion in denying Ellington's motion for new trial based on the newly-discovered evidence that the State's sole rebuttal witness, a state trooper, Fred Rice, testified inconsistently with his testimony in another case and with his teaching materials at the post academy.